App. F. IX-4

192 .

File No. 26-26

Previous References (LB)

Serial Nos. 171

Later References

General and Revenue Secretariat.

Serial Nos. one only

Part B for July 27.

SUBJECT

Rules framed under the Bihar Board Regulation. (Re. Education Cess)

Received

28.1.28

(1)

L L Tees

Please examine carefully the sections of the three L Govt draft bills, and see whether the sections are proper for guide for trial financial & administrative control.

The three cases to be specially dealt are adverse decision of Edn Ces— works and appeals found to be erroneous by D.C.

Please jot up a note as early as possible

6328/1911/26

DC
10/1

8.9.
1911.

As regards the administration of Educational cess, the policy of Govt has not been clearly laid down by shown by the hon member in his minute of 23rd Decr 1925 in File Ed. 71. of 1925.

Unless this question is decided, it is not possible to suggest any Govt amendment. The position will ~~new Bill~~ same as it is now even if the new Bill be passed into law.

It may perhaps better if the question is referred to Educational Secretariat for being worked out & a definite policy be settled

Flag X
in file now.

Paper
DC

The question of execution of works is solved & suitable rules will be framed as ordered in File No 71 of 1925.

I doubt whether any useful purpose will be served by framing any rules under the Act now when the new Bill is about to be passed.

There is another aspect to be considered in this connection viz the definite policy fixing the obligations of Govt. of Bo. in respect of administration of Educational cess laid down in that File. Hence it is difficult to frame rules

However these rules are to be drafted in the first instance by the Educational Branch.

I confess that I cannot exactly understand the policy of Govt in this respect. As regards the execution of works in clause 39 as suggested in the note may be moved as Govt amendment. As regards the control over the Municipal L. Bds & not the Municipal Bodies L. Bds rules contain provisions as shown in the note below. Hence no Govt Amendment seems necessary in this respect.

Submitted.

29/1/32

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Serial No.

GENERAL & REVENUE SECRETARIAT
4974/
26. JAN. 1926

I shall be thankful if the point raised by Lt Leech is worked up in the Con Bill.

I shall be thankful also to have the benefit of the opinion of Extra Member whether any add provisions are needed in the draft Municl & D.B. bills for Coordinating local bodies with the Central Govt Committee

The proposed amendment re Con Ccs, & other amendments needed have to be considered in Council & moved in the meeting I also suggest.

Sd
25/1
84
25/1.
25/1
...1.

Sd: The draft rules are submitted as ordered in

Sd/ 5/2/26

Submitted for perusal:
Draft rules are submitted in accordance with
as ordered.
Ch: Leech 26/1

Mr Keay Esq
will also kindly
examine
26/1 25/1

A note is put up. Some corrections are also indicated in pencil in the draft rules.

NOTE—Contn. Sheet

Cmagsty) 25/1

Serial No

I. THE MYSORE DISTRICT BOARDS BILL

A. The general control of the Government is secured under the following Sections of the propos Regulation :--

(1) General control under Section 45 :--

Section 45 sub-section (1) states that every District Board shall, subject to such exceptions and conditions as the Government may from time to time make and impose, undertake the control and administration of, and be responsible for, certain matters enumerated there-under, matter which comprehend in their scope all the normal duties of the District Boards.

This gives a general control, and its ful significance as well as its necessity will be seen in what follows (infra)

(2) Rule-making powe[illegible] .--

Section 99 Sub-section (1) states that Government may make rules or orders to carry out all or any of the purpose of the Regulation not inconsistent therewith, -- and sub-section (2) clause(n) extends this rule-making power, in particular, to the preparation of plans and estimates of work which are to be partly or wholly constructed at the expense of District Boards.

Now, in the matter of rules or orders for regulating the District Boards' expenditure on schools, there can be no question of inconsistency with the Regulation, as Section 45 sub-section (1) of the Regulation expressly gives general power to Government in this

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in scope, -- Rules can be made by Government from time to time, narrowing down the scope in view of existing conditions.

(b) the location, plan, equipment, staffing, etc., of new schools to be opened out of the Education Cess Funds.

We have seen that under Section 99 (2) clause (n) Government may make rules or orders regarding these matters.

My suggestions is that until the responsibility for the maintenance and management of schools established out of the education cess is transferred by Regulation to the District Boards, it is the Department that must take the initiative and consult the District Board concerned. In case of disagreement, the I.G. should refer the matter to Government, and the orders of Government ~~shall~~ must be final.

All this should be definitely laid down in the Rules.

It might be argued on behalf of the District Boards that the education cess funds, however collected, are under Section 64 to be applied by the District Boards, being a distinct and earmarked item of the District Funds, and such control over the budget as is reserved to Government under Section 76 sub-section (3), or in Chapter IX, does not include control over the matters here in question (namely locality, plan, equipment and staffing of schools). Accordingly, it might

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conceivably be urged that unless control in these matters of detail be expressly reserved by the Regulation, any rules interfering with the discretion of the District Boards as regards the manner of exercising these lawful powers would be inconsistent with the Regulation, and therefore ultra vires.

The reply is that Section 45 sub-section (1) reserves power to Government to make and impose from time to time exceptions and conditions in the matter of the District Board's control and administration of the matters enumerated therein (matters expressly including the construction, management, maintenance and visiting of schools). And powers now proposed to be reserved by the Rules viz., to the Department as regards initiative plans and estimates, and to the Government as regards final orders in the case of disagreement come under these "exceptions and conditions" of Section 45 sub-section (1).

Moreover, Section 99 sub-section (2) clause (n) expressly reserves to the Government the power of making rules or orders with reference to plans and estimates of work.

I am therefore of opinion that the provision for Government control in the proposed Regulations is sufficient for the purposes hitherto mentioned; (this is my own individual opinion, but the legislative branch should be consulted).

The rules should apply a fortiori to schools opened or maintained by education cess funds without intervention from the Government.

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(c) Visiting of Schools :--

Section 45 sub-section 1 clause (c) enumerates visiting of schools (presumably only schools established and maintained out of the District Funds including Education Cess funds) as a responsibility of the District Boards, to be undertaken so far as funds permit.

But this is not being done, and to avoid ambiguity and conflict of jurisdiction, the Rules to be made by Government under this Section may conveniently reserve this duty of Inspection (as distinct from visiting in general) to the Educatio Department until (if ever) statutory responsibilit is invested in the District Boards in this matter.

(d) Schools receiving grant-in-aid from District Funds.

Under Section 74 sub-section (1) a District Board may, subject to the previous sanction ~~section~~ of the ~~State~~ Government, make grants-in-aid to educational institutions.

This is different from the provision for schools under Section 45 sub-section (1) clause(c) Consequently the power to impose conditions under the latter section does not apply to the grants-in-aid.

(e) Agency for execution of works, such as School buildings

Section 39 sub-section (1) states that all public works requiring a degree of professional skill not at the disposal of the District

Serial No

Board shall as a rule be carried out by the Public Works Department unless specially ordered otherwise by the Government.

Sub-Section (2) adds that all other works of the District Board shall be executed by such agency and such supervision as the District Board thinks fit subject to the rules prescribed by Government in this behalf.

It is doubtful whether School buildings for the primary and middle school grade require such 'professional skill' as is not 'at the disposal' of the District Board. But so long as the responsibility for maintaining schools of these grades is not transferred by Regulation to the District Boards, such works should in my opinion continue to be executed by the P.W.D. or by the Department, and to avoid conflict it is desirable that this should be definitely laid down by the Regulation. The rule-making power cannot secure this object, as it would be inconsistent with the express provision of the Regulation (Section 39 sub-section 2); neither can this be brought under the exceptions which the Government may lay down under Section 45 sub-section 1, for no such exception by means of rules can defeat a clear and express provision by Regulation (Section 39 sub-section 2).

This is the only amendment which I think is desirable in the Bill before me.

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Serial No

II. THE MYSORE VILLAGE PANCHAYET BILL.

The provisions for central control containe in the Village Panchayet Bill are similar to those in the District Boards Bill.

No further remarks are therefore necessary

III. THE BILL FURTHER TO AMEND THE MYSORE MUNICI REGULATION.

The Bill is not before me, -- only the proposed amendments are found in the file, and these are not sufficient for my purposes.

I have therefore nothing to say under t head.

The draft Rules under Sections 24 (c) and 37 (g) (h) and (j) of the Mysore Local Boards and Village Panchayets Regulation, VI of 1918.

I have gone through the proposed Rules; they are generally on sound lines; one or two additions will be necessary. But there is no us considering these Rules now. They should be taken up after the Bills now before the Council are passed. In other words, the rules should be issued under the new Regulations, and not under th old.

11.2.26

Note—Contn. Sheet

Serial No.

The question of amending clause 39 of the Dr Bds Bill was considered in council and the amendment dropped as inexpedient. In the rules to be framed necessary provision to safeguard the proper execution of works carried out by the Dr Bd agency at the cost of Govt ess will have to be made. after the Bill is passed.

DS
22/2/26

7388/23.2

Ch Secy
ex w.r.

Secy. (The necessary provision for Rules)

Necessary rules have been framed in the draft rules proposed and sent for approval. No further action is necessary.

DS
22/2/26

Secy: P.W.D.

File
22/2/26

To Personal
by
25/2

I. Municipal Bill.

1) First, with regard to Education Cess, there is no provision in the Bill under consideration. Clause X of Section 59 of the Municipal Regulation empowers Municipal Councils to levy Education Cess. The levy is not compulsory and it is made at the discretion of the Municipal Councils. The income from this source is generally insufficient to meet the cost of primary education in the local area under the control of the Municipal Council. The majority of the Municipal Councils are required to make only an annual contribution to meet education charges in schools maintained and supervised by the Government. Occasionally, Municipal Councils make also grants-in-aid to private educational Institutions. In connection with the deliberations of the Committee appointed to revise the Municipal Account Manual it was suggested that as education cess is uniformly levied no other levy should be insisted on for education. The question was ordered to be dropped. The obligation of Municipal Councils in respect of provision of funds for primary education cannot obviously be limited to the proceeds from education cess. The required amount will have to be made good out of the proceeds from other taxes also. The obligations of Municipal Councils in respect of primary education requires to be clearly defined and a general policy will have to be laid down for future guidance. The entire question may perhaps be referred to the Education Secretariat

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for necessary action.

2) Secondly, with regard to the execution of public works also there is no provision in the Bill under consideration. This matter is not specifically defined in any Section of the Municipal Regulation. Under the present rules, Municipal Councils carry out their own works but at their request, works will be executed by the Public Works Department, the cost being recovered in advance. So far, no difficulty has been experienced in regard to the execution of public works by Municipal Councils.

3) Thirdly, with regard to dismissal of officials found to be unworthy of trust by Deputy Commissioners, provision is made in Clause 8 of the Bill further to amend the Municipal Regulation, for taking power to Government to frame rules(among other matters) in regard to the mode and conditions of appointing, punishing or dismissing any officer or servant and delegating to officers designated in the rules the power to appoint, fine, reduce, suspend or dismiss any officer or servant. When this Bill becomes a law, Government will be in a position to adequately punish Municipal employees for sufficient reasons. In the rules already approved by the Government in G.O. No.L.6129-6192/M1.145-24-52 dated 19th February 1925, it has been ordered that only officials in Government service should be employed by Municipal Councils and the power to suspend, reduce or dismiss such officials is reserved

to the authorities sanctioning the loan of their services. When the Bill further to amend the Municipal Regulation is passed Government can have supreme control as regards dismissal of undesirable employees of Municipal Councils. These rules cannot however, be made applicable to menials and non-pensionable establishments and certain executive appointments. In such cases, Government will have to count upon good sense of the executive head of the Municipal Council to adequately punish Municipal Employees for unworthy conduct, etc. In the case of Municipal Councils to which the provisions of the new Bill is not made applicable, the Government cannot ~~directly~~ interfere and punish Municipal subordinates if the executive head of the Municipal Council or the Municipal Council ~~xxx~~ is not agreeable in ~~xxxxx~~ any specific case.

II Village Punchayet Bill.

4) The levy of a separate Education Cess is not contemplated in the Bill. With regard to execution of public works, the works will generally be petty and will have to be carried out by such agency as the Punchayet thinks proper. In exceptional cases where the amount is large, the works may be entrusted to the charge of the State P.W.D. or a special Sub-overseer appointed to be in charge of the works. The control over panchayets being vested in the local revenue officers, ~~which~~ it is not likely that any conflict of authority will ensue. With regard to establishments, clause 33 ~~Clause XXVIII~~ of the Bill

lays down that "Subject to such rules as may be framed by the Government in this behalf, every panchayet shall employ such officers and servants and shall assign to them such pay, allowances, gratuities, pensions and contributions as may be necessary." Necessary rules may be framed by the Government and very little difficulty need be anticipated in the Government enforcing their ~~decision~~ will with regard to the punishment of any individual employed by a Panchayet.

III District Boards Bill.

5) First, as regards Education Cess, Clause 67 of the Bill lays down that "Every District Board shall levy an education cess at a rate not less than six pies, but not exceeding one anna in the rupee on all items of revenue on which local cess is levied to be utilised solely for purposes of education." The levy of the cess is made compulsory but the Bill is silent as regards the details of administration of the ~~funds~~ proceeds of the cess. Clause 99(1) of the Bill empowers the Government to make rules or orders to carry out all or any of the purposes of the Regulation not inconsistant there with. Under this general power, rules regarding the administration of the fund, either through the Education Department or ~~the~~ by the Board, may be framed. The only difficulty with regard to the expemditure of the proceeds of the cess on educational buildings ~~xxxxx~~ which partake the nature of public works will be that it will conflict with the provisions of ~~Section xxx~~ Clause 39 of the Bill.

In Clause 39, it is laid down that all works requiring a degree of professional skill not at the disposal of the District Board, shall as a rule, be carried out by the P.W. Department unless specially ordered otherwise and that all other works shall be executed by such agency and subject to such supervision as the District Board thinks fit, subject to the rules prescribed by the Government in this behalf. As it is the intention of Government that all educational buildings to be constructed at the cost of the education cess should for the present be executed by the special staff at the disposal of the Education Department, a new sub-clause will have to be inserted between the present Sub-Clauses (1) and (2) to the following effect:-

and that Railways should be constructed by the Railway Dept,

"1 (a) All works to be executed at the cost of education or Railway cess shall, unless specially ordered otherwise by the Government be, as a rule, carried out by the respective Departments of Government."

b) Secondly, as regards execution of works. Clause 39 of the Bill meets all our requirements except in the case of the educational buildings, for which the insertion of a new sub-clause is proposed in the foregoing para. No further action in regard to ordinary public works appears to be called for.

c) Thirdly, as regards dismissal of officials found to be unworthy of trust, clauses 88 and 89 of the Bill give power to Government to frame rules regarding recruitment and punishment (among other matters) of District Board servants. The rules already approved in Government Order No.L.6129-6192/M1.1[illegible]5-24-5 dated 19th February 1925 provide for [illegible]

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Government ~~service~~ Servants only being employed by District Boards except in the case of menials and certain non-pensionable or executive appointments. The power to suspend, reduce or dismiss officials is reserved to the authorities sanctioning the ~~loan~~ of their services, and if the Bill is passed the Government can have supreme control as regards dismissal of undesirable employees. In the case of menials, or other establishments to which the rules will not be made applicable, Government will have to count upon the good sense of the executive head of the District Board to adequately punish the employees for unworthy conduct.

DS
22/1/26